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## SPACE FOR DISPUTE SETTLEMENT MECHANISMS - DISPUTE RESOLUTION MECHANISMS FOR SPACE? A few legal considerations

Frans G. von der Dunk

*University of Nebraska - Lincoln*, [fvonderdunk2@unl.edu](mailto:fvonderdunk2@unl.edu)

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LEGAL ASPECTS OF DISPUTE RESOLUTION MECHANISMS

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**SPACE FOR DISPUTE SETTLEMENT MECHANISMS –  
DISPUTE RESOLUTION MECHANISMS FOR SPACE?  
A few legal considerations**

Frans G. von der Dunk  
International Institute of Air and Space Law  
Leiden University, The Netherlands

**1. Introduction**

The subject of dispute settlement is at the heart of every legal system or subsystem, whether national or international, and in principle it should not be any different for space law either. Indeed, amongst space law experts often attention has been paid to this issue, if indeed usually confined to such experts, like in the context of the International Law Association where a draft convention for the settlements of space law disputes was developed.<sup>1</sup>

Part of this no doubt has to do with the general feeling that even after forty years 'space law' is still a new and somewhat embryonic legal system. The focus was to be in first instance on *establishing* some coherent set of legal rights and obligations and making them *work*, and only then on dealing with potential disputes relating to their *adherence and implementation*.

Moreover, as long as the space arena was *de facto* only open to a small number of players, all moreover of the same public, even sovereign nature, the illusion could be upheld that all disputes would easily be solved in a

pre-judicial phase. Negotiations and diplomatic discussions should do most of the job, as if a dispute were a matter between two highly civilised gentlemen members of the same exclusive club. The space adventure as such was a common project for all mankind; only in specific contexts it was sometimes considered desirable to include specific dispute settlement mechanisms.

Also, however, international space law so far mainly developed from general public international law, where already a number of various dispute settlement mechanisms were available worldwide, some of them for a rather long time and few of them principally excluding legal disputes relating to space activities. Why create something new and special, when these mechanisms were also available? Similarly – to the extent any attention in this context was paid to national laws – national jurisdictions offered well-weathered dispute settlement systems available for space-related disputes.

Indeed it remains a healthy point of departure not to try to reinvent any wheels where the existing ones may do the job just as well. The question then becomes: is there still space for (additional) specific dispute settlement mechanisms here, more particularly for dispute settlement mechanisms

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<sup>1</sup> Cf. the discussion of the Final Draft of the Revised Convention on the Settlement of Disputes Related to Space Activities, as amended in Report of the Sixty-Eighth Conference of the ILA, Taipei, 1998, 239 ff., text at 249 ff.

dedicated to outer space and space activities?

## 2. The issue of dispute settlement in space law

The general picture sketched above has of course undergone considerable change over the last years, perhaps most notably when it comes to the constituency of players. Following almost world-wide trends of liberalisation and privatisation as well as globalisation, private entities and intergovernmental organisations have increasingly become key players also within the field of space activities. Spurred by potential or actual commercial benefits, moreover, the number of states becoming involved and interested increased rapidly – and some of them started to not behave very much like gentlemen anymore.

As a consequence, also, a relevant definition of the term ‘space law’ could no longer be confined to the few space-dedicated international treaties,<sup>2</sup>

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<sup>2</sup>. Notably this concerns the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereafter Outer Space Treaty), London/Moscow/Washington, adopted 19 December 1966, opened for signature 27 January 1967, entered into force 10 October 1967; 6 ILM 386 (1967); 18 UST 2410; TIAS 6347; 610 UNTS 205; the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (hereafter Rescue Agreement), London/Moscow/Washington, adopted 19 December 1967, opened for signature 22 April 1968, entered into force 3 December 1968; 19 UST 7570; TIAS 6599; 672 UNTS 119; the Convention on International Liability for Damage Caused by Space Objects (hereafter Liability Convention), London/Moscow/Washington, adopted 29 November 1971, opened for signature 29 March 1972, entered into force 1 September 1972; 10 ILM 965 (1971); 24 UST 2389; TIAS 7762; 961 UNTS 187; the Convention on Registration of Objects Launched into Outer Space (hereafter Registration Convention), New York, adopted 12 November 1974,

resolutions<sup>3</sup> and intergovernmental organisations<sup>4</sup>. National legal issues

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opened for signature 14 January 1975, entered into force 15 September 1976; 14 ILM 43 (1975); 28 UST 695; TIAS 8480; 1023 UNTS 15; and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement), New York, adopted 5 December 1979, opened for signature 18 December 1979, entered into force 11 July 1984; 18 ILM 1434 (1979); 1363 UNTS 3.

<sup>3</sup>. Notably this concerns the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, UNGA Res. 1962(XVIII), of 13 December 1963; UN Doc. A/AC.105/572/Rev.1, at 37; the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, UNGA Res. 37/92, of 10 December 1982; UN Doc. A/AC.105/572/Rev.1, at 39; the Principles Relating to Remote Sensing of the Earth from Outer Space, UNGA Res. 41/65, of 3 December 1986; UN Doc. A/AC.105/572/Rev.1, at 43; the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, UNGA Res. 47/68, of 14 December 1992; UN Doc. A/AC.105/572/Rev.1, at 47; and the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of all States, Taking into Particular Account the Needs of Developing Countries, UNGA Res. 51/122, of 13 December 1996; XXII-I Annals of Air and Space Law (1997), at 556; 46 Zeitschrift für Luft- und Weltraumrecht (1997), at 236.

<sup>4</sup>. This concerns for example the (at least until recently) intergovernmental organisations INTELSAT (cf. Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT), Washington, done 20 August 1971, entered into force 12 February 1973; 23 UST 3813; TIAS 7532; 10 ILM 909 (1971), and Operating Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT), Washington, done 20 August 1971, entered into force 12 February 1973; 23 UST 4091; TIAS 7532; 10 ILM 946 (1971)); INMARSAT/IMSO (cf. Convention on the International Maritime Satellite Organization (INMARSAT), London, done 3 September 1976, entered into force 16 July 1979; 31 UST 1; TIAS 9605; 15 ILM 1051 (1976), and Operating Agreement on the

were being introduced into the equation<sup>5</sup> as much as various issues of non-space specific legal regimes – telecommunications law, international trade law, intellectual property rights law, contract and tort law, financial securities-related law, even European Community law. Most of such legal regimes had recourse to a dispute settlement mechanism, which of course as such was not very much tuned to space issues, but might nevertheless be called upon in case of conflicts related to space activities.

Thus, the rising concrete importance of the space dispute settlement issue, and its therefore timely choice as a theme for the current symposium, may after all signal that space law is becoming of mature. This may perhaps be to the detriment of the general idea of space activities representing a common

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International Maritime Satellite Organization (INMARSAT), London, done 3 September 1976, entered into force 16 July 1979; 31 UST 1; TIAS 9605; 15 ILM 1051 (1976), plus later amendments); and EUTELSAT (cf. Convention Establishing the European Telecommunications Satellite Organization (EUTELSAT), Paris, done 15 July 1982, entered into force 1 September 1985; Cmnd. 9069; Space Law - Basic Legal Documents, C.II.1, and Operating Agreement Relating to the European Telecommunications Satellite Organization (EUTELSAT), Paris, done 15 July 1982, entered into force 1 September 1985; Cmnd. 9154; Space Law - Basic Legal Documents, C.II.2). Also, the case of the European Space Agency (ESA) may be mentioned here; cf. Convention for the Establishment of a European Space Agency, Paris, done 30 May 1975, entered into force 30 October 1980; 14 ILM 864 (1975).

<sup>5</sup>. For example, as far as specific, space-dedicated national laws including licensing systems for private space activities are concerned, currently 8 states have established such laws (the United States, Norway, Sweden, the United Kingdom, the Russian Federation, South Africa, the Ukraine and Australia), and several more are in the process of developing one.

mission for mankind, but most certainly it is to the liking of the lawyers.

Indeed, by now a rather extensive number of dispute settlement mechanisms has passed scrutiny at some place or other, sometimes with, sometimes without explicit reference to or focus on their application in the context of space law. As to international space law, for example, it has to be remembered that it is generally acknowledged to be a branch of general international law, any dispute settlement mechanism available in the latter area thus warranting some attention.

Within the current paper it is not possible to make a comprehensive survey of all of them. Other experts may be more intimately aware of many of the theoretical as well as practical benefits, obstacles and parameters arising in the case of a particular dispute settlement mechanism. Therefore, this paper mainly tries to provide a summary methodology for analysing the issue, rather than a comprehensive survey. In doing so, it builds upon the approach of Dr. Huang Huikang, Legal Advisor at the Ministry of Foreign Affairs with the People's Republic of China, when he recently undertook an effort in this direction.<sup>6</sup>

### 3. The parties to a dispute

As Dr. Huikang pointed out, dispute settlement in the first place is about parties. Basically, they can be of three different types. Sovereign states constitute the first category from a historical as well as a legal point of view. In spite of the increasing role of

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<sup>6</sup>. Dr. Huang Huikang presented his remarks at the Space Law Conference 2001, held in Singapore, 11-13 March 2001, organised by the International Institute of Space Law and the Society of International Law of Singapore.

other players in the international arena (including space), and in spite of growing legal recognition, even personality, of such other players, states still provide the lynchpin of the system of public international law.

This certainly applies to space also, states still forming the dominant set of players in terms of space activities. Consequently, international space law continues to be oriented very much towards states as legally relevant entities. They are the prime makers of space law – through the creation of and adherence to treaties and customary law – as well as breakers thereof: most rights and obligations found under the space treaties, for example, are phrased as rights and obligations of states.

Therefore, states also provide the natural *trait-d'union* between the rules established at the international, even global level, and other natural or legal persons to the extent that space law is or should be relevant for the latter. States are, with the notorious case of the European Community as perhaps the sole partial exception so far, the only legal entities commanding the full range of legal powers related to jurisdiction: jurisdiction to legislate and enforce, but also to adjudicate – *a propos* dispute settlement! – and the sovereignty to possess territory and provide nationality, *inter alia* for the purpose of exercising jurisdiction.

Next to states, historically speaking the second type of player concerns that of the intergovernmental organisation. Still public by nature, since comprised of a number of (member) states, they are obviously not states themselves. Certainly in their original incarnation they functioned as vehicles for states to achieve certain goals better realised jointly than individually. This applied both to the intergovernmental organisations essentially established for trying to provide some form of (quasi-)legal regulation and hence

some measure of legal certainty – regulatory organisations pooling some of the regulatory competencies of the participating states – and to those established to undertake joint operational activities.

The latter category of operational organisations, was perhaps a unique feature of outer space activities, representing proof of the extremely risky and costly character thereof. There is probably no comparable international field where states pooled their material resources and technological know-how to such a great extent. The former category, in view of their regulatory aims, in a sense in themselves presented a mechanism for *preventing* disputes, and if not fully successful in that respect, often also for *solving* them.

This, in the end, gives intergovernmental organisations also their important place in the space arena, which in turn translates into an important place in the relevant legal field. Often these organisations took the lead in developing new types of space activities viz. applications and, consequently, often new law.<sup>7</sup> Furthermore, their very character as mechanisms for balancing the various interests of the member states meant that they should be provided with solid legal instruments to exercise such a function, such as competencies to interfere or decide in conflict situations. Such legal instruments, for reasons indicated, usually included dispute prevention or settlement mechanisms.

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<sup>7</sup> The Third ECSL Colloquium held in Perugia, in May 1999, extensively dealt with the role international organisations played in the further development of space law. See International Organisations and Space Law, Proceedings of the Third ECSL Colloquium, 1999, ESA Publ. SP-442.

Most importantly, such developments translated into the development of a separate international legal personality, which is then also of importance for the dispute settlement issue. Intergovernmental organisations are now widely recognised as possessing such international legal personality, even if not comparable to that of states, since not at all following automatically from their mere existence and principally confined to their field of functioning as laid out in their constitutive documents. Nevertheless, ever since the famous *Reparation for Injuries case*<sup>8</sup> it is widely recognised that such legal personality exists under international law and provides intergovernmental organisations with the principled possibility to become a separate party to a dispute under international law.

Specifically with regard to international space law, this was also reflected in various ways for intergovernmental organisations to obtain a sort of secondary status under the space treaties. In the case of Rescue Agreement, Liability Convention and Registration Convention, for example, the opportunity was offered for intergovernmental organisations fulfilling certain further conditions to become parties to the respective treaty regimes for all practical purposes.<sup>9</sup> As is well known, however, in regard of the Rescue Agreement only ESA, in regard of the Liability Convention only ESA and EUTELSAT, and in regard of the Registration Convention only ESA

and EUMETSAT have so far availed themselves of these opportunities.

Finally as to the third category of relevant space players – that of private enterprise. In particular in some areas of space activities where commercial opportunities are now mature and well known, private participation has become a permanent and prominent feature. This applied already for a long time to such non-space but space-related activities as development and construction of spacecraft and instruments or development of certain space-based products on earth. Since a few decades however private enterprise has also entered such important fields of space activities proper as satellite communications and the launch services business.

At the same time, it must be observed that private enterprise for historical reasons is not mentioned anywhere in the space treaties, and somewhat similarly is at best an object in most functional, non-space specific regimes such as that of the WTO. The ITU has only fairly recently begun to provide private parties with their own independent legal status within the framework of the organisation, as to its crucial role in co-ordinating orbital slots, orbits and frequencies for satellite communication operators.

It is here of course that states most prominently play their role as *trait d'union* between international law and other entities. Through the international responsibility as confirmed by Article VI of the Outer Space Treaty and the international liability as elaborated by Article VII of the Outer Space Treaty and then the Liability Convention, states are made to apply international space law rules also to such private entities. From the other side, the authorisation and continuing supervision required by the same Article VI, and more broadly existing or newly established bases for

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<sup>8</sup>. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, International Court of Justice, 11 April 1949, I.C.J. Rep. 1949, 174.

<sup>9</sup>. See resp. Art. 6, Rescue Agreement, Art. XXII, Liability Convention, and Art. VII, Registration Convention.

jurisdiction such as territory or nationality respectively the registration-based jurisdiction provided for by Article VIII of the Outer Space Treaty, allow states to take up this role. That having been said, the place of private entities in international law in general, and hence even more so in international space law (due to its state-oriented character), in terms of opportunities to assert certain rights under dispute settlement mechanisms has always been troublesome. In international space law, the question certainly remains valid, to which extent private enterprise does have, respectively should have, its own formal role in terms of dispute settlement, read *jus standi*.

#### **4. The issue of parties: a few preliminary remarks**

The threefold distinction as between players as sketched – of states, intergovernmental organisations (IGO's) and private entities – leads to a first major tool for analysing the issue of dispute settlement regarding space activities.

*State-versus-state* disputes are, in view of the foregoing, both the most likely type of dispute to arise under international law, and most fit for being solved at the international (law) level. They form the classical type of dispute in general international law, and this remains true for international space law, viz. the law relevant for space activities, as well.

*State-versus-IGO* disputes would perhaps have to be further subdivided into two categories: one where the state in question is a member state of the IGO and the other where it is not. In the first case, any dispute between the state and the IGO is likely to be solved by the internal arrangements made within the framework of the IGO (presuming of course such arrangements do exist). In the second

case, indeed general international law and the dispute settlement options it offers become relevant again. In both cases, there is no fundamental distinction between general international law and specific space law; at best, under the latter the more prominent role of IGO's makes this category of disputes more relevant.

*State-versus-private entity* disputes could equally be subdivided into those between a state and a private entity falling under its jurisdiction and those where the private entity concerned does not fall under the state's jurisdiction. In both cases, however, usually it is national law that is involved, as much as national dispute settlement mechanisms. The major difference between the first and the second case is then, that a private entity falling under the jurisdiction of a state which it has a dispute with is in a fundamentally unequal position from a legal perspective. By contrast, in the other case the applicability of both national law and dispute settlement mechanisms is not self-evident, and hence the actual process of dispute settlement and its outcome far from clear. A complicating factor in terms of space activities may stem from the international character also of private involvement therein, which makes it likely that more than one national law, including relevant dispute settlement mechanisms, is potentially involved in any particular dispute.

*IGO-versus-IGO* disputes will be quite rare, in particular on space issues, in view of the comparatively limited number of IGO's. They are however extremely important and complex, since in the last resort likely to involve two different but sometimes nevertheless overlapping sets of member states. By nature they would seem to require solution at the international law level. However, at least within their member states, and

even more so within their host state, IGO's usually enjoy a measure of legal personality under national law which is much stronger than under international law. Hence, they might perhaps on occasion also be tempted to solve certain disputes in national courts and/or base themselves upon national law.

*IGO-versus-private entity* disputes could also give rise to quite complex situations, where it is even more likely that parties would seek recourse to national law and national dispute settlement mechanisms. Much depends on whether the private entity in question falls within the jurisdiction of a member state of the IGO, or even of its host state. In terms of space activities, this may be an important issue especially in areas where operational IGO's are active alongside private entities.

*Private entity-versus-private entity* disputes finally are inherently a matter for national law and national courts, even if the private parties come from different jurisdictions. Nevertheless, in such an international area as that of space activities, with many international joint ventures or public-private partnerships in whatever version, the question would be valid whether it would be feasible to allow this set of systems to be dealt with by national law-means. The major drawback of the national law-solution follows from the international, even global, character of space and space activities. There are by definition so many national law-solutions around; none of them are completely identical, in terms of dispute settlement procedure, for example, whilst also the substantive outcome might of course differ significantly in any particular case. Hence the risk arises of totally fragmented jurisprudence, not to say of possibilities of forum shopping in individual cases. This may be true, and

a more or less accepted fact of life in many other areas of international law; from the perspective of space it weighs much more heavily in view of the inherently international character of most of the relevant activities.

### **5. The legal character of the dispute**

Dispute settlement may be about parties, it certainly is also about law. Hence, there are two more major distinguishing factors to be discerned and discussed. This concerns the character of the dispute; where there is both an issue of private law-versus-public law, and one of whether criminal, civil or administrative law is concerned.

Starting with the latter, it is suggested that upon closer view this is very much a matter for national law and national dispute settlement mechanisms, and at that level moreover organised fundamentally differently from state to state. In other words, at the international level, due to the specific legal character of the community of states, the distinction between civil and administrative law is blurred at best, and more often right away irrelevant respectively non-existent. Similarly, criminal law issues in international law still form exceptional, isolated and quite specific cases, with only relatively recently some more permanent international dispute settlement mechanisms such as the International Criminal Court having been established. Consequently, it is submitted that for the present purpose the fundamental distinction between criminal, civil and administrative law issues may be safely ignored.

The other issue is a bit more complicated. The distinction between 'public' and 'private' law is, in its core, focused on the type of players which the law aims at. Public law from this perspective may be perceived as dealing fundamentally with issues



which are of interest to a particular society as a whole, and thus with the role, function and activities of a public body.

On the national level, this refers to a state or state agency. At the same time, of course, individual subjects of such national public law regimes may often have recourse to dispute settlement mechanisms, at least in democratic societies, as well. Thus, disputes on public law are usually between state (agency) and state (agency) (this is often what administrative law is about) or between state (agency) and citizen (usually administrative or criminal in character, but this obviously depends upon the individual state at issue).

Private law by contrast is then generally referring to regimes dealing with issues between two private, i.e. fundamentally equal, parties, which very often means by definition civil law is at stake. Only to the extent state bodies are seen as acting in a private capacity *and* are not protected by their public status (state immunity!), can they become involved in private law disputes as well.

At the international level, further complications arise. Next to states, IGO's represent another type of public entity. Thus, the term 'public international law' is generally referring to the legal rules applicable at the international level knowing states and IGO's as sole subjects; private entities merely play a role – if at all – as objects of the regime at issue.

Such a definition at the same time however turns a number of international treaties, concluded between sovereign states, into elements of private law since the rights and obligations emanating from those treaties fundamentally apply to private entities, albeit through the intermediate

role of the states concerned.<sup>10</sup> This is, of course, why such treaties are often labelled 'private international law' treaties; this term focuses on the subject matter *together with* the intended ultimate bearers of rights and duties: private entities (whether natural or legal persons). If we follow this approach, it would make sense to make a principled distinction in any case between public law issues and private law issues also with a view to dispute settlement in space activities.

This would lead to the following matrix for analysis of the place – and space – for (existing as much as to be newly established) dispute settlement mechanisms regarding space and space law issues, in the widest sense of the word.

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<sup>10</sup>. A clear example is provided by the treaties constituting the Warsaw system on contractual liability in air transport. Contracting states to such a treaty oblige themselves to make sure that certain categories of private entities under their jurisdiction (notably carriers, passengers and consignors of cargo) are made to bear certain obligations or enjoy certain rights, through the mechanism of automatic or explicit transposition (in monistic respectively dualistic systems). Cf. e.g. Convention for the Unification of Certain Rules Relating to International Transportation by Air, Warsaw, done 12 October 1929, entered into force 13 February 1933; 137 LNTS 11; Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Transportation by Air, Warsaw, 12th October 1929, The Hague, done 28 September 1955, entered into force 1 August 1963; 478 UNTS 371; and Convention for the Unification of Certain Rules for International Carriage by Air (hereafter Montreal Convention), Montreal, done 28 May 1999, not yet entered into force; 48 Zeitschrift für Luft- und Weltraumrecht (1999), at 326.

**Table 1. Disputes on space activities: a matrix for analysis**

The one side The other side	States	Intergovernmental organisations	Private entities
States	<i>Public</i>  <i>Private</i>	<i>Public</i>  <i>Private</i>	<i>Public</i>  <i>Private</i>
Intergovernmental organisations	<i>Public</i>  <i>Private</i>	<i>Public</i>  <i>Private</i>	<i>Public</i>  <i>Private</i>
Private entities	<i>Public</i>  <i>Private</i>	<i>Public</i>  <i>Private</i>	<i>Public</i>  <i>Private</i>

#### 6. Towards 'filling in' the matrix – a few provisional conclusions

In order to get a clear picture of the need for additional (space law-dedicated) dispute settlement mechanisms, respectively space for such mechanisms, the above matrix should be 'filled in'. The present analysis only focuses on *existing* dispute settlement mechanisms that are or reasonably may be of interest for parties to a dispute related to space activities and space law, and then only *some* of them, to make the point. In most cases, it should be stressed, relevant documents anyway refer back in a general way to existing and broadly available opportunities offered by dispute settlement mechanisms independent from and outside of the scope of the document in question.

The most well known judicial dispute settlement mechanisms available under general public international law, both located in The Hague, are in principle also available to disputes on space activities or other matters related to space law. However, the International Court of Justice (ICJ) is only available for this purpose to states, more in

particular only in cases where *both* states have one way or another accepted the jurisdiction of the court. IGO's can, if at all, only avail themselves of the ICJ's wisdom in an advisory capacity, once duly authorised. By its very nature, it deals with public law issues only; private law comes in where public legal ramifications arise.

Access to the other major dispute settlement body, the Permanent Court of Arbitration (PCA), has traditionally also been reserved to states only, but recently – limited – access is also offered to IGO's and even private parties, albeit that disputes between *two* private parties so far are fully excluded. Nevertheless, this allows not only public but also private law disputes to be dealt with.

At the other end, the various national court systems are equally open in principle to all sorts of disputes related to space activities. With the exception of private entity-versus-private entity disputes – where, as mentioned before, the further problem of *which* national dispute settlement mechanism is to be used is prominent in view of the

international character of space activities, and issues of non-uniformity or even forum shopping may arise – such dispute settlement may immediately run into fundamental problems. Wherever states are involved, quite likely sovereign immunity may be invoked and accepted – when it comes to space activities, these are still very often undertaken for political/strategic or scientific reasons, in other words: of a distinctly public character. Similarly, wherever IGO's are involved, functional immunities may be invoked – especially in courts of member states of the IGO in question.

When it comes to judicial (as opposed to political and diplomatic) dispute settlement mechanisms in principle available *for any dispute related to space activities*, this more or less presents the full picture! Only once one 'descends' either into specific treaty frameworks, or specific IGO-frameworks, or specific subject matter, or specific areas, one encounters a large number of dispute settlement mechanisms.

For example, the Liability Convention has its own dispute settlement system – however rudimentary and flawed, in view of the ultimate non-bindingness of the 'judgements' of the Claims Commission<sup>11</sup> – but it obviously is limited to disputes under the Convention, i.e. dealing with disputes on liability for damage as confined by it. This also means that it is open only to states; not even IGO's under Article XXII can call upon it on their own account. This also causes dispute settlement to be a public law-affair. At the same time, it is interesting to note that the Convention explicitly provides for an *additional* means for dispute settlement; other venues, notably

private law suits, are not excluded by mere application of the Convention.<sup>12</sup>

As already referred to, the various IGO-frameworks have their own more or less elaborate dispute settlement systems. Such organisations as ESA and INTELSAT (as operational (still-)IGO's) or ITU (as a regulatory IGO) have quite extensive dispute settlement systems, though obviously remaining confined to the subject matter of the area of operation or regulatory activity of the IGO. More seriously is the general lack of bindingness, reflecting the sovereignty of the member states, of such mechanisms (in the case of ITU it has, as far as known, even never been used). Also, neither IGO's (in the case of ITU; obviously for ESA this is not at issue) nor private entities can avail themselves of such mechanisms, again leaving disputes of a private law-character to other dispute settlement mechanisms. To some extent the WTO-framework is furthest advanced, in that it has at least allowed the European Union a more or less equal standing, including its dispute settlement mechanism.

From a totally different angle, the ICC (with its International Court of Arbitration) and UNCITRAL (with its Arbitration Rules), dealing with international commerce- and trade-related issues, are available in potentiality also for space-related disputes. Interestingly, these mechanisms do not only allow for private parties to make use of them, they are actually very much targeted at them. States and IGO's, to the extent relevant, are 'accepted' only on a par with such private entities, in other words: sovereign or functional immunities are not accepted. Also, by definition this means that private law issues will be at stake, not public law ones.

<sup>11</sup>. See Art. XIX(2), Liability Convention.

<sup>12</sup>. See Art. XI(2), Liability Convention.

Consequently, the following matrix arises, admittedly rather non-exhaustive. However, in view of the further complications and differences not yet discussed (e.g., some cases concern arbitration mechanisms, whether ad hoc or more permanent, others court or court-like systems), and the widespread specificity in terms of subject-matter or specific IGO-framework, it suffices to show that in some crucial areas of space activities the necessary comprehensive dispute settlement mechanisms are indeed lacking. Moreover, even if the matrix would ultimately be filled in

comprehensively, the issue of lack of coherence remains. Even if any particular corner of the matrix would know its own, comprehensive dispute settlement mechanism, the overall uniformity would certainly be threatened. If only from that perspective, meaning that a mechanism should be established (or, to the extent general principles of law are seen to provide for such a mechanism at least in rudimentary fashion, strengthened) for ensuring overall coherence in dispute settlement, there is certainly space for dispute settlement mechanisms for space.

**Table 2. Space for dispute settlement mechanisms for space.**

The one side The other side	States	Intergovernmental organisations	Private entities
States	<i><b>ICJ; PCA</b></i> <i>WTO; ITU; etc.</i> <i>[Liability Convention]</i>  <i>(National law)</i>	<i><b>PCA (ICJ)</b></i> <i>((National law))</i> <i>[Various IGO's]</i>  <i>(National law)</i>	<i><b>PCA</b></i> <i>(National law)</i>  <i>(ICC; UNCITRAL)</i> <i>(National law)</i>
Intergovernmental organisations	<i><b>PCA (ICJ)</b></i> <i>((National law))</i> <i>[Various IGO's]</i>  <i>(National law)</i>	<i><b>PCA</b></i> <i>((National law))</i>  <i>(National law)</i>	<i><b>PCA</b></i> <i>(National law)</i>  <i>(ICC; UNCITRAL)</i> <i>(National law)</i>
Private entities	<i><b>PCA</b></i> <i>(National law)</i>  <i>(ICC; UNCITRAL)</i> <i>(National law)</i>	<i><b>PCA</b></i> <i>(National law)</i>  <i>(ICC; UNCITRAL)</i> <i>(National law)</i>	<i>N.A.(?)</i>  <i>ICC; UNCITRAL</i> <i>National law</i>

Legenda:

**Bold** = comprehensive (in principle all types of disputes covered)  
 (Between brackets) = only under circumstances available (immunity-issues)  
 ((Between double brackets)) = only exceptionally available (double immunity-issues)  
 [Between square brackets] = fundamentally limited in scope one way or the other